

## CHAPTER 08 BUSINESS REGULATIONS

### ARTICLE 8-7. TOBACCO RETAIL ESTABLISHMENTS

#### Sec. 8-7-1. Definitions in General

The definitions in A.R.S. Tit. 9 (A.R.S. §§ 9-101 et seq.) and A.R.S. 36-798 shall be applicable to this Article unless a term is specifically defined in this Article, or unless the context requires otherwise.

#### Sec. 8-7-2. Definitions Pertaining to this Article

For the purposes of interpretation of this Article, the following words and phrases shall mean:

(a) *Applicant* – Any Person filing an Application with the City for a Tobacco Retail Establishment License.

(b) *Application* – An application for a Tobacco Retail Establishment License to sell tobacco or tobacco related devices made on a form provided by the City. The Application shall contain the full name of the Applicant, the Applicant's residential and business addresses and telephone numbers, the name of the business for which the License is sought and any additional information the City deems necessary.

(c) *Compliance Checks* – The system the City may use to investigate and ensure that those authorized to sell Tobacco, Tobacco Products, and Tobacco Related Devices are following and complying with the requirements of this Article. Compliance Checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to Tobacco, Tobacco Products, and Tobacco Related Devices.

(d) *Control* – The power to direct or cause the direction of the management and policies of an Applicant, Licensee, or Controlling Person, whether through the ownership of voting securities or a partnership interest, or by agreement or otherwise. Control is presumed to exist if a Person has direct or indirect ownership of or power to vote ten percent (10%) or more of the outstanding voting securities of the Applicant, Licensee, or Controlling Person or to Control in any manner the election of one or more of the directors of the Applicant, Licensee, or Controlling Person. For the purpose of determining the percentage of voting securities owned, controlled, or held by a Person, the voting securities of any other Person directly or indirectly controlling, controlled by or under common control with the other Person, or by an officer, partner, employee, or agent of the Person or by a spouse, parent, or child of the Person shall be included. Control is also presumed to exist if a creditor of the Applicant, Licensee, or Controlling Person holds a beneficial interest in fifty percent (50%) or more of the liabilities of the Applicant, Licensee, or Controlling Person.

(e) *Controlling Person* – A Person directly or indirectly possessing Control of an Applicant or Licensee.

(f) *Individually Packaged* – The practice of selling any Tobacco or Tobacco Product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose Tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or

other packaging containing more than a single pack or other container as described in this definition shall not be considered Individually Packaged.

(g) *Licensee* – Any Person to whom the City has issued a License under this article or any Person acting on behalf of such Person.

(h) *Licensing Office* - The Finance Department for the City of Maricopa or other department as designated by the City Manager.

(i) *Loosies* – The common term used to refer to a single or Individually Packaged cigarette.

(j) *Minor* – An individual who has not yet reached eighteen (18) years of age.

(k) *Minor Traffic Violation* - A conviction or finding of responsibility not to include the following, which shall be considered serious traffic violations: excessive speeding involving a single offense for a speed of fifteen miles per hour or more above the posted speed limit; reckless driving as provided by A.R.S. §28-693; aggressive driving as provided by Section A.R.S. §28-695; racing as defined in A.R.S. §28-708; improper or erratic traffic lane changes as provided by A.R.S. §28-729; following the vehicle ahead too closely as provided by A.R.S. §28-730; a violation that is connected with a fatal traffic accident; driving a motor vehicle if the individual has not been issued a valid driver license; driving a motor vehicle without a driver license in the individual's possession; driving a motor vehicle without having a valid endorsement for the type of motor vehicle or motor vehicle combination being operated.

(l) *Moveable Place of Business* – Any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

(m) *Person* – Any individual, partnership, limited partnership, firm, corporation, association, or any other group acting as a unit.

(n) *Police Department* – The Police Department for the City of Maricopa.

(o) *Sale* – Any lawful transfer of goods for money, trade, barter or other consideration.

(p) *Sampling Tobacco* – The lighting, inhalation, or combination thereof of Tobacco, Tobacco Related Devices, or Tobacco-related Products for the purpose of testing a Tobacco Product prior to the Sale of such product.

(q) *Self-Service Merchandising* – Open displays of Tobacco, Tobacco Products or Tobacco Related Devices in any manner where any individual shall have access to the Tobacco, Tobacco Products, or Tobacco Related Devices, without the assistance or intervention of the Licensee or the Licensee's employee. The assistance or intervention shall entail the actual physical exchange of the Tobacco, Tobacco Product, or Tobacco Related Device between the customer and the Licensee or employee. The phrase shall not include Vending Machines. Self-Service sales are interpreted as being any sale where there is not an actual physical exchange of the Tobacco between the clerk and the customer.

(r) *Smoking Lounge* – A business establishment that permits the smoking of Tobacco or other combustible substances on site, including but not limited to establishments commonly known as hookah bars/cafes, tobacco clubs, or smoking parlors.

(s) *Tobacco or Tobacco Products* – Any substance or item containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and

forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

(t) *Tobacco-related Devices* – Any Tobacco Product as well as a pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of Tobacco or Tobacco Products.

(u) *Tobacco Retail Establishment* – A retail establishment that has obtained an appropriate License to possess Tobacco, Tobacco Products or Tobacco-related Devices for the purpose of selling them for consumption and not for resale, in which greater than fifty percent (50%) of the business' gross revenue must be from the Sale of Tobacco, Tobacco Products or smoking related accessories. This definition does not include retail establishments which derive the majority of their gross revenue from the sale of cigars and cigar accessories.

(v) *Tobacco Retail Establishment License or License* – Authorization issued by the City to any Person to operate a Tobacco Retail Establishment.

(w) *Vending Machine* – Any mechanical, electric or electronic, or other type of self-service device that dispenses Tobacco, Tobacco Products or Tobacco Related Devices upon the insertion of money, tokens or any other form of payment.

#### **Sec. 8-7-3. Applicability; Provisions Cumulative**

(a) The provisions of this Article shall apply to all Tobacco Retail Establishments and Persons as defined herein.

(b) The provisions of this Article shall be in addition to any other regulations, privilege or license taxes or permit requirements required by the City, the state or other applicable agency and cumulative to any other applicable regulations, procedures or penalties.

#### **Sec. 8-7-4. License Application; Fee; Timeline**

(a) Any Person desiring to obtain a Tobacco Retail Establishment License must apply to the Licensing Office. Each Application must be accompanied by all required Application fees.

(b) Upon approval, and prior to issuance of the Tobacco Retail Establishment License, the Applicant must pay all required License fees.

(c) An Application will be granted or denied within the schedule of administrative and substantive review timeframes, as established by the Licensing Office.

#### **Sec. 8-7-5. Tobacco Retail Establishment License Required**

(a) It is unlawful for any Person to conduct or operate as a Tobacco Retail Establishment in the City without first obtaining and maintaining in effect a current, unrevoked and unsuspended Tobacco Retail Establishment License as required by this Article.

(b) It is unlawful for any Person licensed as provided in this Article to operate under any name or conduct business under any designation not specified in the License.

(c) It is unlawful for any Person licensed as provided in this Article to conduct business at any location not specified on such License.

(d) No License shall be issued to a Moveable Place of Business. Only fixed location businesses shall be eligible to be licensed under this Article.

(e) The License required by this Article is in addition to any other licenses or permits required by any governmental authority necessary to lawfully conduct business.

**Sec. 8-7-6. Tobacco Retail Establishment License Application; Contents**

(a) Each Application for a Tobacco Retail Establishment License shall include a description of the proposed business activity. Such description shall include, but not be limited to, the following information. Paragraphs (1) through (9) below are required to be completed about the Applicant, the business owner, the Licensee if not the Applicant or the business owner, the agent responsible for managing the premises on a day to day basis (hereinafter “managing agent”) and any Controlling Person as defined herein:

- (1) Full legal name and any name by which the Person is or has been known;
- (2) Current home address and telephone number and addresses over the past five (5) years;
- (3) Driver’s license number or other government-issued, federally recognized identification;
- (4) Birth date, height, weight, hair and eye color;
- (5) Business occupation and employment history for five (5) years;
- (6) License history, including issuance, revocation, suspension or termination of any current or past Tobacco Retail Establishment Licenses;
- (7) Applicants, agents, and all employees shall submit to a fingerprinting process as directed by the Licensing Office for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the Licensing Office or designee.
- (8) Listing of any prior felony or misdemeanor convictions except Minor Traffic Violations;
- (9) Documentation of age over eighteen (18) years;
- (10) Designation of the managing agent who will be managing or operating the Tobacco Retail Establishment at the indicated location and proof of the managing agent’s authorization to act on behalf of the prospective Licensee;
- (11) Name, address and telephone number of any other local agent authorized to conduct daily business and proof of authority to act on behalf of the prospective Licensee;
- (12) Name, address and telephone number of statutory agent in Arizona if a corporation or an out-of-state Applicant, Licensee or owner;
- (13) Except for corporations listed on the major stock exchanges, the names and addresses of all Persons financially interested in the business. If a Person financially interested in the business of the prospective Licensee is a corporation, the names and addresses of all Persons financially interested in that corporation shall be provided;

(14) The names and addresses of any Controlling Persons as defined herein. If the Controlling Person is a corporation, the names and addresses of all Persons having Control of the controlling corporation shall be provided;

(15) Evidence of current, valid conditional use permit or any other applicable zoning approval for the proposed activity issued by the City; and

(16) Such other information as may be requested by the Licensing Office to determine the truth of the information required to be set forth above.

(b) Any change in ownership of the business or in the information required to be provided in paragraphs (1), (10), (11), (12), or (13) above shall be reported to the Licensing Office within ten (10) calendar days after the change. Such changes shall be subject to investigation and approval by the City as provided in Subsection (c) set forth below and, if disapproved, the disapproval shall be grounds for termination of the License as provided in Section 8-7-14 of this Code. The requirement for reporting changes as required herein is effective at all times during the City's consideration of the Application and at all times when a License issued hereunder is in effect. All information set forth above in paragraphs (1) through (16) must be updated at the time of the renewal of the License.

(c) The Police Department shall conduct an investigation of the Application and background of the Applicant and proposed Licensee. Based on such investigation, the Police Department shall recommend to the Licensing Office the approval or denial of the License. In addition, the Development Services Department and Fire Department, and any other affected department, may inspect any premises proposed as the site of the establishment and may make separate recommendations to the Licensing Office concerning compliance with the provisions of this Article and any other applicable codes.

#### **Sec. 8-7-7. Location of Tobacco Retail Establishment**

Refer to the City of Maricopa Zoning Code for location requirements. A Tobacco Retail Establishment License will not be issued for any location not permitted in the City of Maricopa Zoning Code.

#### **Sec. 8-7-8. Payment of Fees and Taxes**

An Application for a Tobacco Retail Establishment License will not be processed or renewed if the Applicant is delinquent in payment of any City taxes, fees, renewals or other City payments due in accordance with Section 8-1-3 of this Code.

#### **Sec. 8-7-9. Fees**

(a) An Application for a Tobacco Retail Establishment License must be accompanied by all fees required by this Chapter or by any other applicable laws, rules or regulations.

(b) In order for an Application to be administratively complete, all fees must have been submitted.

(c) Submission of the annual renewal form must include the annual fee before it will be processed.

(d) Fees are not prorated, transferable or refundable unless otherwise provided by law.

**Sec. 8-7-10. Term of License**

The Tobacco Retail Establishment License, issued pursuant to the provisions of this Article, shall be valid only during the calendar year in which it is issued. Any License may be renewed by filing a renewal Application for approval and paying the renewal fee before the first day of the year in which the Applicant wishes to be licensed.

**Sec. 8-7-11. Public Hearing on Tobacco Retail Establishment License; Notice**

Refer to the City of Maricopa Zoning Code for requirements.

**Sec. 8-7-12. Inspection of Premises, Property and Records**

To ensure compliance with this Article and other applicable laws, the business premises of any Person required to be licensed under this Article, including any property on the premises related to the Tobacco Retail Establishment, must be open to inspection by representatives of the City upon request at any time during the Licensee's regular business hours, or reasonable hours as agreed upon by the Licensee and the City.

**Sec. 8-7-13. Grounds for Denial**

The following include, but are not limited to, grounds for denial of an Application for a Tobacco Retail Establishment License:

- (a) The Applicant, or proposed conduct of the Tobacco Retail Establishment, fails to meet the requirements of this Article or any other applicable provision of this Code or law;
- (b) The Applicant is a corporation which is not qualified to transact business in the state;
- (c) Misrepresentations or material misstatements are made in the Application;
- (d) Harm to the public health, safety or welfare of the community, or clear or present danger of serious damage or danger to the public, would result from granting the License; or
- (e) A business owner, or a managing agent, an Applicant, other managing employee or a Controlling Person in the business to be licensed has been convicted of:
  - (1) A felony; or
  - (2) A misdemeanor which relates to the activity to be licensed, or has, within two (2) years preceding the date of the issuance of a License, violated any of the provisions of this Article or the Maricopa City Code while conducting a Tobacco Retail Establishment.

**Sec. 8-7-14. Grounds for Revocation, Suspension, or Non-Renewal of License**

(a) In addition to the automatic termination of a License as provided in this Article, the License may be revoked, suspended or denied renewal for any one or more of the following grounds:

- (1) The Licensee has violated the requirements of this Article or any other applicable provision of this Code or law;

- (2) The Licensee has been convicted of fraud in conducting the business or was deceitful in obtaining a License to conduct the business;
- (3) The Licensee has been convicted in a court of competent jurisdiction of a felony or of any misdemeanor which relates to the licensed activity;
- (4) The Licensee is grossly ignorant or willfully negligent in the business of the Tobacco Retail Establishment;
- (5) There occurs on the premises repeated acts of violence or disorderly conduct;
- (6) The Licensee or any employee or managing agent thereof fails or refuses to make the premises or records available for inspections and examination as provided in this Article;
- (7) The Licensee knowingly files an Application or other document with material information which is false or misleading or knowingly gives testimony in an investigation or other proceeding which is false or misleading;
- (8) The Licensee is delinquent for more than thirty (30) days in the payment of any applicable taxes or fees payable to the City following formal notice of delinquency; or
- (9) Any completion of non-permitted improvements to the premises of the Tobacco Retail Establishment occurs without appropriate approvals from the City.

(b) Upon discovery of a violation, the provisions of Section 8-1-10 of this Chapter shall go into effect:

#### **Sec. 8-7-15. Appeals**

Any Person aggrieved by the denial of an Application for License or by the restrictions placed upon the License or by the suspension or revocation of such License, and who is not satisfied with the decision of the City Manager or designee, shall have the right to an appeal before the City Council in accordance with Section 8-1-11 of this Chapter.

#### **Sec. 8-7-16. Application after Denial or Termination**

No Person may apply for a Tobacco Retail Establishment License within one year from:

- (a) The denial of any such License to the Applicant; or
- (b) The suspension, revocation, termination or non-renewal of such License unless the cause of the denial, suspension, termination, revocation or nonrenewal has been, to the satisfaction of the Licensing Office, removed in such time.

#### **Sec. 8-7-17. Display of License**

A Licensee shall display such License in a conspicuous place in the Tobacco Retail Establishment.

#### **Sec. 8-7-18. Transferability; Automatic Termination of License**

- (a) Licenses issued hereunder are not transferable.

(b) The following shall result in automatic termination of a Tobacco Retail Establishment License:

- (1) Any change in location of a licensed Tobacco Retail Establishment;
- (2) Upon the sale or transfer of more than fifty percent (50%) of the stock or ownership of the Tobacco Retail Establishment; or
- (3) Upon the revocation or termination of any use permit or other zoning approval issued by the City relating to the Tobacco Retail Establishment.

(c) A new Application may be made by the Person whose License is terminated as provided in this Section, or by another Person desiring to own or operate a Tobacco Retail Establishment.

#### **Sec. 8-7-19. Special Operating Requirements for Smoking Lounges**

It is unlawful for any Person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises within the City, the business of a Smoking Lounge except in compliance with all of the following requirements:

- (a) The business shall comply with the provisions regulating smoking in the workplace set forth in Section 36-601.01 of the Arizona Revised Statutes commonly known as the Smoke-free Arizona Act.
- (b) No individual under eighteen (18) years of age shall be permitted within the business.
- (c) All business-related activities shall be conducted wholly within a building, with the exception of outdoor seating, which shall be operated in accordance with the City of Maricopa Zoning Code. No window coverings shall prevent visibility of the interior of the tenant space from outside the premises during operating hours. Any proposed window tint shall be approved in advance by the development services department.
- (d) The interior of the business enterprise shall be maintained with adequate illumination to make the conduct of patrons within the premises readily discernible to individuals of normal visual acuity.
- (e) Adequate ventilation shall be provided for the heating of coals in accordance with all requirements as established by the City of Maricopa Building Code.
- (f) Parking shall be provided using the standards as established under the City of Maricopa Zoning Code.
- (g) The occupancy shall not exceed occupancy limits as established by the City of Maricopa Building Code.

#### **Sec. 8-7-20. Prohibited Sales**

It shall be a violation of this Article for any Person, or employee or responsible party, to sell or offer to sell any Tobacco, Tobacco Product, or Tobacco Related Device:

- (a) To any individual under eighteen (18) years of age.
- (b) By means of any type of Vending Machine. This prohibition shall not apply to Vending Machines that meet the requirements set forth in A.R.S. §36-798.02, as may be amended from time to time.



(c) By means of Self-Service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the Tobacco, Tobacco Product, or Tobacco Related Device and whereby there is not a physical exchange of the Tobacco, Tobacco Product, or Tobacco Related Device between the Licensee, or the Licensee's employee, and the customer. This division shall not apply to retail stores which cannot be entered at any time by individual under eighteen (18) years of age.

(d) By means of Loosies as defined in this Article.

(e) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in Tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the Sale of lawfully manufactured cigarettes or other Tobacco Products.

(f) By any other means, to any other individual, or in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

#### **Sec. 8-7-21. Vending Machines**

It shall be unlawful for any Person licensed under this Article to allow the Sale of Tobacco, Tobacco Products, or Tobacco Related Devices by the means of a Vending Machine. This Section does not apply to Vending Machines that meet the requirements set forth in A.R.S. §36-798.02, as may be amended from time to time.

#### **Sec. 8-7-22. Self-service Sales**

It shall be unlawful for a Licensee under this Article to allow the Sale of Tobacco, Tobacco Products, or Tobacco Related Devices by any means whereby the customer may have access to such items without having to request the item from the Licensee or the Licensee's employee and whereby there is not a physical exchange of the Tobacco, Tobacco Product, or the Tobacco Related Device between the Licensee or his clerk and the customer. All Tobacco, Tobacco Products, and Tobacco Related Devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling Tobacco, Tobacco Products, or Tobacco Related Devices at the time this Article is adopted shall comply with this Section within ninety (90) days following the effective date of this Article. This Section shall not apply to retail stores which cannot be entered at any time by individual under eighteen (18) years of age.

#### **Sec. 8-7-23. Compliance Checks and Inspections**

All licensed premises shall be open to inspection by the Police Department or other authorized City officials during regular business hours. From time to time, the City may conduct Compliance Checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase Tobacco, Tobacco Products, or Tobacco Related Devices. Minors used for the purpose of Compliance Checks shall be trained and supervised by designated City personnel. Minors used for Compliance Checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of Tobacco, Tobacco Products, or Tobacco Related Devices when such items are obtained or attempted to be obtained as part of the Compliance

Check. No minor used in Compliance Checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a Compliance Check shall answer all questions about the minor's age asked by the Licensee or employee and shall produce any identification upon request, if any exists.

#### **Sec. 8-7-24. Other Illegal Acts**

Unless otherwise provided, the following acts shall be a violation of this Article:

- (a) *Illegal sales.* It shall be a violation of this Article for any Person to sell or otherwise provide any Tobacco, Tobacco Product, or Tobacco Related Device to any Minor within City limits.
- (b) *Illegal possession.* It shall be a violation of this Article for any Minor to possess any Tobacco, Tobacco Product, or Tobacco Related Device within City limits. This subsection (b) shall not apply to Minors lawfully involved in a Compliance Check by the City.
- (c) *Illegal use.* It shall be a violation of this Article for any Minor to smoke, chew, sniff or otherwise use any Tobacco, Tobacco Product, or Tobacco Related Device within City limits.
- (d) *Illegal procurement.* It shall be a violation of this Article for any Minor to purchase or attempt to purchase or otherwise obtain any Tobacco, Tobacco Product or Tobacco Related Device, and it shall be a violation of this Article for any Person to purchase or otherwise obtain such items on behalf of a Minor. It shall further be a violation for any Person to sell or otherwise provide any Tobacco, Tobacco Product, or Tobacco Related Device to any Minor, and it shall further be a violation to coerce or attempt to coerce a Minor to illegally purchase or otherwise obtain or use any Tobacco, Tobacco Product, or Tobacco Related Device. This subsection (d) shall not apply to Minors lawfully involved in a Compliance Check by the City.
- (e) *Use of false identification.* It shall be a violation of this Article for any Minor to attempt to disguise his/her true age with a false form of identification, whether the identification is that of another Person or an identification on which the age of the Person has been modified or tampered with to represent an age older than the actual age of the Minor.

#### **Sec. 8-7-25. Exceptions and Defenses**

- (a) Nothing in this article shall prevent the providing of Tobacco, Tobacco Products, or Tobacco Related Devices to a Minor as part of a lawfully-recognized religious, spiritual, or cultural ceremony.
- (b) It shall be an affirmative defense to the violation of this Article for a Person to have reasonably relied on proof of age as described by state law.

#### **Sec. 8-7-26. Penalty**

- (a) A violation of this Article is an offense, punishable as provided in Article 1-8 of this Code. Each day on which a violation continues shall be a separate offense.
- (b) In addition to the penalties provided for in this Section, a violation of this Article is grounds for revocation of a business License as provided in Section 8-7-14 of this Article.